THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 16856 of 2006

11-08-2006

Between:-

Uppalamarthi Pitchaiah

Petitioner

And

The Assistant Commissioner of Endowments, Ongole, Prakasam district and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 16856 of 2006

Oral order:

This writ petition is filed assailing the action of the officials of Sri Chennakesava Swamy Temple, Kotapadu J. Pangulur Mandal, Prakasam district (2nd respondent-temple) notifying the holding of auction for grant of leasehold rights of its agricultural properties in respect of an extent of Ac.02-36 cents in survey No. 282 of Kotapadu village.

The petitioner states that he was inducted as a tenant into the land aforesaid about thirty (30) years ago and has been regularly paying rents to the 2nd respondent-Temple without any default. In 2003, the 2nd respondent took

steps to evict the petitioner from the lands without deciding his claim to being a landless poor person and for the benefits under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). He therefore filed W.P.No. 14395 of 2003. The said writ petition was disposed of directing the respondents to decide the claim of the petitioner to being a landless poor. The petitioner then laid a claim before the 1st respondent seeking declaration that he is a landless poor person and seeking the benefits under Section 82 of the Act. The 1st respondent, according to the petitioner, issued notices from time to time including on 20-08-2004 and 30-07-2005 calling the petitioner for an inquiry and the petitioner also submitted documents including a certificate issued by the Mandal Revenue Officer, J. Pangulur to the effect that he has no other property, except the leasehold occupation of the land in an extent of Ac.02-36 cents in survey No. 282 of Kotapadu village belonging to the 2nd respondent-Temple. The 1st respondent did not dispose of the petitioner's claim to being a landless poor person. Now the 2nd respondent-Temple is proceeding to conduct an auction for grant of leasehold rights. This is the substantive fabric of the petitioner's grievance in the writ

petition.

The petitioner has not placed any material before this court to show that he was granted a lease of the 2nd respondent-Temple lands, 30 years ago as claimed by him, after a process of a public auction and execution of a lease deed after approval of the competent authority or even otherwise. The period of the claimed lease is not mentioned nor it is stated that he has been in continuous occupation of the lands of the 2nd respondent-Temple for a period of six (6) years as required under Section 82 of the Act; as a lawful cultivating tenant in accordance with law and statutory instruments.

Mere physical occupation of lands of the 2nd respondent-Temple and cultivation thereof, either with the unlawful and irregular co-operation or negligence of the endowment officers, will not elevate the petitioner from the status of an encroacher of endowment properties to that of a lawful tenant. The endowment officials are executors of the legislative mandate of the Act. They have no discretion except as conferred by the Statute. Any action of an endowment official, including the Commissioner of Endowments, if in transgression of the Statute or the statutory rules, is null and void and of no legal effect. The mere fact, as claimed by the petitioner, that he has been

in physical occupation of the endowment properties of the 2nd respondent-Temple for over thirty years by the benign indifference of endowment officials without a landlord – tenant relationship in accordance with law, would not make the petitioner a lawful cultivating tenant. The benefits under Section 82 of the Act are intended only to lawful cultivating tenants and not for the entire citizenry, who are landless poor persons.

In any event, the inaction on the part of the respondents in not disposing of the claim of the petitioner to a being landless poor person and to the benefits under Section 82 of the Act since 2004, is inexplicable. Inquiry into the claims of being a landless poor person are simple and uncomplicated issues which do not require two years for disposal. As a statutory authority conferred with powers and obligations, the 1st respondent should expeditiously dispose of the applications of claims to being landless poor persons, as such claims are relevant and material for proper grant of leases of endowment properties whose proper regulation and management of the leases of endowment properties.

In the aforesaid circumstances, the writ petition is disposed of directing the 1st respondent to consider and dispose of the petitioner's application presenting his claim

to be a landless poor person and to the benefits under Section 82 of the Act, expeditiously and in any event within a period of one week from the date of receipt of a copy of this order. The 1st respondent must take a decision in accordance with the principles stated hereinabove for determining the benefits under Section 82 of the Act. The petitioner is also at liberty to participate in any auction process now notified for the lands in question.

Nothing in this order shall be construed as an expression on the merits of the petitioner's claim or on his entitlement to grant of a lease of the agricultural lands of the 2nd respondent-Temple. The principles for determination of a landless poor person have been mentioned in this judgment only in the context of the petitioner's assertion in the writ petition that he is a tenant of a long vintage i.e., over thirty years. Long occupation is different from lawful occupation.

Needles to mention that any auction held will be subject to the determination of petitioner's claim to being landless poor person pending before the 1st respondent and directed in this order to be disposed of expeditiously by the 1st respondent.

The writ petition is disposed of at the stage of

admission after hearing the learned Government Pleader for Endowments. No costs.

GODA RAGHURAM, J

Dated:11-08-2006
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